



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1998

Mr. J. Greg Hudson
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel, L.L.P
816 Congress Avenue
Austin, Texas 78701-2443

OR98-2923

Dear Mr. Hudson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119970.

The Collin County Sheriff's Office, which you represent, received a request for fourteen categories of personnel information concerning twenty named employees. In your initial request for a decision to this office, you explained that this office had previously ruled upon some of the requested information. We believe that those previous decisions, when addressing the applicability of sections 552.101, 552.117, and 552.130 of the Government Code continue to apply to the requested information here. You should rely on those rulings when determining what information previously addressed must be withheld. Open Records Letter Nos. 97-2759 (1997), 96-1774 (1996). You also argued in your original correspondence that portions of the requested information are protected from required public disclosure by sections 552.101, 552.102, 552.107, 552.117, and 552.119. You indicated that you will release the remaining requested information. In a subsequent letter, you indicate that you only seek a decision from this office concerning several sexual harassment investigation records. You have submitted the records at issue and have highlighted the information you seek to withhold under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents.

Before addressing your claimed exception, we note that some of the requested information, about which you no longer seek an attorney general decision and which has not been previously addressed or submitted to this office, must be withheld under the Open Records Act. *See, e.g.*, Gov't Code §§ 552.101 (information protected by common-law privacy), .119 (peace officer's photographs). Please use caution before releasing the requested information. Gov't Code § 552.352 (distribution of confidential information is a criminal offense). We have enclosed a sample listing of common types of information deemed confidential under common-law privacy.

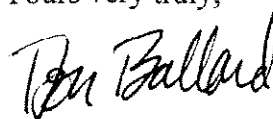
We now turn to your argument that the highlighted information in the submitted documents must be withheld based upon a right of privacy. You explain that the highlighted

information identifies victims and witnesses to alleged sexual harassment in the workplace. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* After reviewing the submitted information, we believe that you must withhold the identities of the alleged victims and witnesses in most of the submitted documents. You have indicated that the identities of the alleged victims and witnesses have been highlighted. You must withhold this information. One of the documents, labeled 97-017, does not appear to involve a sexual harassment investigation. Information in this document may not be withheld under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

Ref: ID# 119970

Enclosures: Submitted documents
Common Types of Confidential Information

cc: Mr. Mark Gilliam
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(w/Common Types of Confidential Information)